Case Name: *R (Hilltop Experiences Limited) v Norfolk County Council [2025] EWHC 1447 (Admin)*

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Commentary: The outdoor education facility known as Hilltop Experiences Limited ("Hilltop") applied for judicial review of the decision of Norfolk County Council ("the Council") to grant planning permission for a new household waste recycling centre close to their facility. Hilltop is a residential outdoor education facility for children aged 4 to 12 years old, many of whom have special educational needs and other vulnerabilities.

In dismissing the application, Mrs Justice Lieven set out useful guidance on a wide range of topics, including alternative sites, major development inside Areas of Outstanding Natural Beauty, the application of the Equality Act 2011 in determining planning applications, and the requirements of EIA screening opinions. Overall, the judgment is a reminder of the discretion granted to the exercise of planning judgment in judicial review proceedings.

The proposed recycling centre was to replace an existing facility located almost adjacent to the site. Both sites fell within the Norfolk Coast National Landscape. The proposed site had a significantly larger service area, allowing easier vehicular access, movement and parking, but the throughput of the site was not expected to be significantly greater than the existing one. Although the proposed site was significantly larger, in operational terms it was expected to meet the same needs and the impacts were predicted to remain broadly the same, save for the fact that the proposed site would allow for the processing of "trade waste" comprised of commercial and industrial waste and hazardous waste.

The Grounds of Challenge

Permission was granted on six grounds of challenge, but Counsel for Hilltop only pursued five during the hearing. All were rejected. The grounds of challenge were as follows:

- Ground One: the Council unlawfully failed to consider alternative sites for the proposed development, including a site known as the Stonehill Way Site;
- Ground Two: The Council took into account irrelevant considerations in exercising its planning judgment in respect of whether the proposal constituted "major development" within the meaning of national policy on Areas of Outstanding Natural Beauty ("AONB"), now the Norfolk Coast National Landscape. Additionally or alternatively, the Council irrationally decided that the site was not "major development" within the meaning of para. 183 of the National Planning Policy Framework ("NPPF");

- Ground Three: the Council failed to interpret and lawfully apply paras 182-183 of the NPPF in relation to development in the AONB;
- Ground Four: this ground was withdrawn;
- Ground Five: the Council failed to discharge its obligation pursuant to s.149 of the Equality Act 2010 in granting permission;
- Ground Six: the Council's Environmental Impact Assessment screening opinion was unlawful because (i) it failed to consider the effects of certain types of waste at the Site and (ii) it failed to consider the risks to human health of the development, particularly bearing in mind the proximity to the Hilltop site.

After setting out relevant sections of the Officer's Report ("the OR") and authority on the interpretation of such reports, and her conclusions on an unsuccessful application to adduce further evidence relating to another potentially available site, Mrs Justice Lieven proceeded to analyse each ground of challenge.

Ground One: consideration of alternative sites

It was not disputed that alternatives were considered, but Counsel for Hilltop submitted that the Council was under a duty to investigate the matter further, relying on *R (Forge Field Society) v Sevenoaks DC* [2014] EWHC 1895, a challenge to a decision where there were to competing sites for the provision of affordable housing wherein the OR had not considered a further proposed site. Counsel for the Council accepted that there was a duty to consider alternatives, but that this arose because of the terms of the relevant Development Plan policies, and not the caselaw. The Court held that the analysis in the OR – which concluded that the alternative site assessment by Council's Director of Highways, Transport and Waste was poor but it nonetheless remained appropriate to grant planning permission – applied whether the duty arose under policy or as a relevant consideration.

In analysing whether the Council discharged the duty to consider alternatives, the Court identified two questions: whether the consideration given was legally adequate and whether the committee members were materially misled. The Court held that the consideration of alternatives was adequate, emphasising that the investigations undertaken and assessing the adequacy of the information on alternatives involves the exercise of planning judgement. The level of investigation of alternative sites, both in terms of the quantity of sites considered and the detail in relation to each individual site, can vary according to the nature of the proposal, the scale of the negative impacts and the relevant need. The time and expense of investigating alternative sites also needed to be proportionate to the potential harm of the development, all of which were questions of planning judgment.

The Court also found that the Committee had not been misled: The OR made it clear to members that the Director's site assessment was inadequate to satisfy the requirements of policy that alternative sites had been fully assessed. Members there Norfolk Coastline protected landscape. It was open to them to find that there was a departure from policy and other considerations did not justify the grant of permission, but they did not reach that conclusion. Rather, in light of the very limited impact of the proposal and the need, they determined that no further assessment of alternatives was required. The possibility of another potential alternative site did not change the analysis.

Ground Two: the Council's determination that the proposal was not "major development."

Counsel for Hilltop submitted that the Council took into account irrelevant considerations when it said that the site was *"essential infrastructure for the use of the local community"* and referred to the existing recycling centre, which was also an irrelevant consideration that had nothing to do with the test for major development. It was also submitted that the conclusion that the site was not "major development" was irrational in any event. Counsel for Hilltop accepted that the question of whether the proposed development is "major development" is a matter of planning judgement, and "major" should be given its natural meaning, but emphasised the fact that the development is "major development" within the meaning of the Town and Country Planning (Development Management Procedure) England Order 2015. Counsel for the Council responded that these were non-material errors, which did not materially mislead the LPA in its conclusions, a submission with which the Court agreed.

The Court concluded that the Council's decision on whether the proposal constituted major development was a reasonable one, well within the scope of their planning judgement, and that there was no basis for finding that the members erred in law in their conclusion about major development. There was nothing arguably irrational in the members' conclusion on the issue. The site was a relatively small one with a quite limited turnover. There were no additional traffic movements generated and it was very close to a main road.

Ground Three: exceptional circumstances justifying major development in an AONB

This ground challenged the conclusion in the OR that, assuming the proposal was "major development" in an AONB, the proposal met the NPPF-required exceptional circumstances test. Counsel for Hilltop submitted that the OR failed to advise members as to whether there were exceptional circumstances that justified the proposal.

The question as to whether the conclusion that the proposal was not "major development" was open to members under Ground 2, while the Court found that the

OR had correctly set out the required test, and in any event it was a matter of planning judgment for the members to determine whether they thought that the factual situation amounted to exceptional circumstances. Further, Given that members were advised that the development was not major development, and given that they voted to grant planning permission, the Court held that it was highly likely that the absence of express reference to the exceptional circumstances test would have made no difference to the decision.

Ground Five: the Equality Act 2010

Counsel for Hilltop submitted that the content of the OR itself did not demonstrate that due regard had been given to the equality issues. There was no reference to the PSED and no regard was given to the particular make-up of the cohort of children attending Hilltop and their particular sensitivities to the noise impacts from the proposed site, nor had an Equalities Impact Assessment ("EqIA") been drawn up before granting planning permission, which might have resulted in a different decision.

The Court emphasised that giving "due regard" will vary depending on the facts and context of the particular decision in question, and that two factors indicated that the level of "due regard" required by the Council in this case was relatively low:

- (1) the degree of likely impact on the children with protected characteristics; and
- (2) the information that was given to the LPA about the vulnerable cohort of children.

Under factor (1), the judge noted that the LPA had carried out a detailed assessment of noise impacts, which is not in itself criticised. There was no evidence that the noise impact from the proposed site would be any greater on Hilltop than from the existing use, which would necessarily cease. The same activities were to be carried out, with approximately the same level of usage and the same hours.

Under factor (2), counsel for Hillside submitted that there was a duty on the Council to investigate the nature of the cohort of children at Hillside, particularly in light of evidence from special needs education school staff who used Hillside's services. However, the Court noted the Hillside in their representations to the Council made no reference to the possible additional impact on children with disabilities or particular vulnerabilities. Decision-makers should be concerned with the obvious impacts, and the Council was entitled to rely upon the information it had been provided with. This was not a situation where there was a broad and undefined group where a decision maker might have to take a more proactive approach to investigate potential impacts.

Ground Six: the screening opinion.

Counsel for the Hilltop submitted that the screening opinion unlawfully failed to consider the effects of certain waste types on the site and the impact of the site on human health. The screening opinion concluded that a full EIA was not required. Counsel for Hilltop noted that the screening opinion made no mention of Hilltop at all, including its sensitive receptors and those who might by virtue of a protected characteristic be particularly sensitive, nor the close proximity of the playing field, nor did the applicant's original request refer to the sensitive users at Hilltop and its close proximity either in the context of "socio-economics", "human health" or "waste".

The Court rejected this submission. This was a matter of planning judgment for the Council. The changes to the composition of the waste to be processed at the new site compared to the old were minimal, and there was no evidence that there was any risk to human health from the proposal or the existing site.

Conclusion

With all grounds of challenge being rejected by the Court, the claim was dismissed.

Case summary prepared by Gregor Donaldson